

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

JAMI SCOTT, SHANNON SULANDER,)
JANNA STEWART, BRETT FREEMAN,)
RACHEL ROYER, JOEY LEWIS, KORRI)
CULBERTSON and BRUCE McCONNELL,)

Plaintiffs,)

v.)

SYNEOS HEALTH, LLC,)

Defendant.)

Case No. 5:22-cv-163-KDB-DCK

DEFENDANT’S PARTIAL MOTION TO DISMISS

Fed. R. Civ. P. 12(b)(1), (3), and (6); 9 U.S.C. §§ 3-4

Defendant Syneos Health, LLC (“Syneos”), by and through the undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves to partially dismiss the Amended Complaint [D.E. 2] filed by Plaintiffs for failure to state a claim upon which relief may be granted as to Counts IV and V – fraud and unfair and deceptive trade practices, respectively – and because said claims fail as a matter of law.

Syneos also moves this Court to compel arbitration of Plaintiffs Jami Scott’s, Brett Freeman’s, and Rachel Royer’s (“Arbitration Plaintiffs”) claims in this lawsuit pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, and, alternatively, to dismiss them from this action under Rules 12(b)(1) and (3) of the Federal Rules of Civil Procedure. *See Choice Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709 (4th Cir. 2001) (“dismissal is a proper remedy [under 9 U.S.C. § 3] when all of the issues presented in a lawsuit are arbitrable.”).

In support of this motion, Syneos submits:

(1) a memorandum of law;

- (2) Declaration of Jennifer Trucks with attachments;
- (3) correspondence with opposing counsel; and
- (4) Syneos Health, LLC 2022 Limited Liability Company Annual Report filed with the North Carolina Secretary of State.

The declaration submitted herewith and incorporated by reference include as attachments proof of Arbitration Plaintiffs' agreements to be bound by this procedure.

WHEREFORE, Syneos respectfully requests that their motion be granted and that Plaintiffs' claims for fraud (Count IV) and unfair and deceptive trade practices (Count V) be dismissed. Syneos also requests that Arbitration Plaintiffs' portion of this suit be stayed and that Arbitration Plaintiffs be ordered to arbitration in accordance with the parties' mutually binding arbitration agreement. Alternatively, Syneos requests that Arbitration Plaintiffs be dismissed from this suit under Rules 12(b)(1) and (3) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction and improper venue since all of Arbitration Plaintiffs' claims are covered by a valid and enforceable agreement to arbitrate.¹

¹ The great weight of authority interpreting the Rules of Civil Procedure holds that a partial motion to dismiss stays the time for filing an Answer. Otherwise, a defendant would be put to the cost of answering twice and confusion would be created. *See, e.g., FDIC v. Heidrick*, 812 F. Supp. 586, 591 (D. Md. 1991), *aff'd*, 995 F.2d 471 (4th Cir. 1996); *Harrington v. Sprint Nextel Corp.*, No. 08-336, 2008 WL 2228524, at *5 (E.D. Va. May 29, 2008); *Godlewski v. Affiliated Computer Svcs.*, 210 F.R.D. 571, 572 (E.D. Va. 2002). Under the overwhelming interpretation of Rule 12, because Syneos has moved to dismiss Plaintiffs' Amended Complaint in part, it is not required to file an Answer until the time set forth in Rule 12(a)(1)(a). But, out of an abundance of caution, to the extent the Court deems it necessary to do so, Syneos respectfully requests that the Court treat this as a motion for extension of time to file an Answer until the time set forth in Rule 12(a)(1)(a) and/or in the alternative as a denial of liability regarding all claims contained in the Amended Complaint.

Respectfully submitted, this 27th day of December, 2022.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/ Jefferson P. Whisenant

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the forgoing **PARTIAL MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system, and I hereby certify that I have sent the document to the following via U.S. Mail:

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This the 27th day of December, 2022.

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